

HON. JAMES L. ROBERT

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DONALD VARNEY and MARIA
VARNEY, Husband and Wife,

Plaintiffs,

vs.

AIR & LIQUID SYSTEMS
CORPORATION, et al.,

Defendants.

NO. 2:17-cv-01902 JLR

DEFENDANT VIKING PUMP, INC.'S
ANSWER TO COMPLAINT FOR
PERSONAL INJURY

Defendant VIKING PUMP, INC. ("Viking") by and through its undersigned attorneys, for answer to Plaintiff's Complaint, hereby admits, denies and alleges as follows:

I. PARTIES

Answering Paragraph I of the Complaint, any allegations directed to Viking are DENIED. As to the allegations directed at the other defendants, no answer is required. As to the remaining allegations, Viking is without sufficient information to form a belief as to the truth of these allegations, and therefore, these allegations are DENIED.

II. JURISDICTION

Answering Paragraph II of the Complaint any allegations directed to Viking are DENIED. This paragraph also contains allegations that are framed as legal conclusions

1 that require no answer. However in the event those statements are deemed to constitute
2 allegations requiring an answer, they are DENIED. As to the allegations directed at the
3 other defendants, no answer is required. As to the remaining allegations, Viking is without
4 sufficient information to form a belief as to the truth of these allegations, and therefore,
5 these allegations are DENIED.

7 More specifically, Viking is not a Washington corporation and its principal place
8 of business is not in Washington. Viking believes that Washington may not have personal
9 jurisdiction over it in this case but will be unable to establish the scope of that
10 jurisdiction—if any—without determining Plaintiff’s exact allegations regarding the
11 Viking product or products to which he claims exposure.

13 **III. FACTS**

14 Paragraph III of the Complaint, any allegations directed to Viking are DENIED.
15 This paragraph also contains allegations that are framed as legal conclusions that require
16 no answer. However in the event those statements are deemed to constitute allegations
17 requiring an answer, they are DENIED. As to the allegations directed at the other
18 defendants, no answer is required. As to the remaining allegations, Viking is without
19 sufficient information to form a belief as to the truth of these allegations, and therefore,
20 these allegations are DENIED.

23 **IV. LIABILITY**

24 Answering Paragraph IV of the Complaint, any allegations directed at Viking are
25 DENIED. As to those allegations directed at other defendants, no answer is required. As
26

1 to the remaining allegations, Viking is without sufficient information to form a belief as to
2 the truth of these allegations, and therefore, these allegations are DENIED.

3 4 **V. DAMAGES**

5 Answering Paragraph V of the Complaint as to Damages, any allegations directed
6 at Viking are DENIED. As to those allegations directed at other defendants, no answer is
7 required. As to the remaining allegations, Viking is without sufficient information to
8 form a belief as to the truth of these allegations, and therefore, these allegations are
9 DENIED.

10 11 **VI. AFFIRMATIVE DEFENSES**

12 As a result of the recent filing of this action, Viking has not had an opportunity to
13 conduct a reasonable inquiry of the facts underlying this lawsuit, but based upon its
14 knowledge, information, and belief formed after discovery in other asbestos injury
15 lawsuits, interposes the following defenses, some of which may ultimately be supported
16 by the facts to be revealed in discover and investigation of this case. Upon request and
17 after having conducted discovery in this case, Viking will voluntarily withdraw those
18 defenses that are unsupported by the facts revealed in pre-trial discover and investigation.
19 On the basis of the above, and
20

21 FOR FURTHER ANSWER, AND BY WAY OF AFFIRMATIVE DEFENSES,
22 Viking alleges as follows:
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- 24 1. The court lacks jurisdiction due to insufficiency of service of process;
- 25 2. Plaintiff's complaint fails to state a claim upon which relief can be granted;
- 26

1 3. Plaintiff's claims are time barred because this action was not commenced
2 within the time required by the applicable statutes of limitations and/or statutes of repose;

3 4. Plaintiff's claims are barred by the doctrines of estoppel, laches and/or
4 waiver;

5 5. Plaintiff's damages, if any, were caused or contributed to by the
6 superseding, intervening, and unexpected actions, omissions, or conduct of persons or
7 entities which bar any right to recover;

8 6. Plaintiff's damages, if any, were solely and proximately caused by or
9 contributed to by the negligence of third parties or entities over whom VIKING PUMP,
10 INC. exercised no control or right of control;

11 7. Plaintiff assumed or voluntarily exposed himself to the specific and
12 appreciated risks that caused his damages, if any, which either bars or reduces Plaintiff's
13 damages. Also, Plaintiff's alleged injuries were solely and proximately caused by or
14 contributed to by Plaintiff's own fault or negligence which fault either bars or reduces
15 Plaintiff's damages. Those acts or omissions may include but are not limited to the
16 following:

17 (a) Plaintiff failed to exercise ordinary care for his own safety when he
18 knew or should have known of the hazards incident to his/her/their work;

19 (b) Plaintiff failed to use appropriate protective clothing and equipment
20 when he knew or should have known that the materials with which he was working might
21 be harmful;

1 (c) Plaintiff failed to use this defendant's product in the proper and
2 intended manner and subjected such products to abnormal uses not reasonably
3 foreseeable;

4 (d) Plaintiff failed to advise, request or demand that his employers
5 provide appropriate protective clothing and equipment and/or suitable and safe working
6 conditions;

7 (e) Plaintiff failed to heed advice and warnings concerning proper and
8 safe working conditions and use of the materials with which she/he/they were working;

9 (f) Plaintiff failed to use that safety equipment provided by his
10 employers and/or failed to follow the employers' safety procedures;

11 (g) Plaintiff voluntarily and knowingly assumed the risks that caused the
12 damages, if any, thereby barring this action and/or reducing Plaintiff's recovery;

13 8. Plaintiff's damages, if any, were caused by an abnormal use, unintended
14 use, alteration, and/or misuse of a product for which this defendant is not liable;

15 9. Plaintiff's damages, if any, were directly and proximately caused buy the
16 acts or omissions of Plaintiff's fellow servants;

17 10. If Plaintiff incurred any injury or damage, which this defendant specifically
18 denies, then the risk of such injury or damage to Plaintiff was not reasonably foreseeable.

19 11. Plaintiff failed to join an indispensable party to this litigation;

20 12. Plaintiff may have failed to mitigate his damages;

21 13. Any harm to Plaintiff that may have been caused by exposure to asbestos-
22 containing products was caused after the useful safe lives of such products;

1 14. Any asbestos-containing products for which this defendant might be held
2 legally accountable and which are alleged to have caused Plaintiff's injuries, were
3 supplied pursuant to government contracts and reasonably precise military specifications
4 promulgated and approved by the United States government. These United States military
5 specifications expressly required the use of asbestos in such products;
6

7 15. Any asbestos-containing products at Plaintiff's worksite(s) were in
8 conformity with the prevailing industrial, scientific, and/or medical state-of-the-art, and/or
9 in compliance with all applicable non-governmental, legislative, and/or administrative
10 regulatory standards;
11

12 16. The then current state-of-the-art medical, scientific and industrial
13 knowledge, art and practice at all time relevant to this action was such that this defendant
14 neither knew, or should have known, that any asbestos-containing products for which they
15 may be legally responsible presented a foreseeable risk of harm to persons such as
16 Plaintiff in the normal and expected use of the products.
17

18 17. This defendant retained no control over any worksites at which Plaintiff
19 worked and/or was allegedly exposed to asbestos. It denies it owed any duty to provide
20 Plaintiff with a safe place to work.

21 18. This action may be barred by the applicable state and/or federal industrial
22 insurance and/or worker's compensation laws;

23 19. Venue may be improper in this court.

24 20. If it is proven at the time of trial that this answering defendant is liable for
25 damages to the Plaintiffs, said liability is not sole but rather proportionate between or
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1 among this defendant and the following persons or entities:

- 2 a. Any defendant who has settled with Plaintiffs;
- 3 b. Any asbestos manufacturer who has filed a bankruptcy petition;
- 4 c. Plaintiff's employers and fellow servants;
- 5 d. The US Government, any military installation, naval shipyard, etc. at
- 6 which Plaintiff worked;
- 7 e. Any manufacturer of an asbestos containing product to which
- 8 Plaintiff was exposed not named in this action; and,
- 9 f. Plaintiffs.

10 Therefore, this defendant shall only be liable for its percentage share of the fault pursuant

11 to RCW 4.22. et seq.

12 21. Plaintiff was employed by knowledgeable and sophisticated employers.

13 Any duty this defendant may have had to warn Plaintiff of any potential harm, incident to

14 the normal use of products, was discharged by his employers' intervening duty to give

15 him any other any required warnings.

16 22. Plaintiff was a sophisticated user and knowledgeable of the risks of use, if

17 any.

18 23. This defendant denies any alleged liability as a successor, successor in

19 business, successor in product line or a portion thereof, assignee, predecessor, predecessor

20 in business,

21 predecessor in product line or a portion thereof, parent, alter ego, subsidiary, wholly or

22 partially owned by, or the whole or partial owner of or member in an entity researching,

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1 manufacturing, designing, labeling, assembling, distributing, leasing, buying, offering for
2 sale, selling inspecting, servicing, installing, contracting for installation, repairing,
3 warranting, re-branding, and/or packaging a certain substance, the generic name of which
4 is asbestos;
5

6 24. Plaintiffs lack privity with this defendant thereby precluding any breach of
7 warranty claims.

8 25. Any warranties deemed to have been made were fulfilled, terminated or
9 disclaimed.

10 26. Plaintiffs waived any claim based upon any alleged breach of warranty
11 because Plaintiffs failed to give notice of any alleged breach of warranty within a
12 reasonable time.
13

14 27. Any exposure to this defendant's products, which exposure is expressly
15 denied, was so minimal as to be insufficient to establish to a reasonable degree of
16 probability that its product caused the claimed injuries.

17 28. If Plaintiffs incurred any injury or damage, which this defendant denies, this
18 answering defendant alleges that the risk of such injury or damage was not foreseeable.
19

20 29. Whatever damages Plaintiffs may have suffered, if any, were due solely or
21 in part to the failure of the Plaintiff's employer or employee to take adequate precautions
22 and provide Plaintiff with a safe place to work.

23 30. Any tobacco use is an assumption of a known risk which proximately
24 caused and contributed to his injuries and damages which either bars or reduces Plaintiff's
25 alleged damages;
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1 31. Plaintiff's may have failed to mitigate their damages;

2 32. At all times since enactment, this defendant has fully complied with the
3 requirements of the Occupational Safety and Health Act (OSHA), and the rules and
4 regulations promulgated thereunder. At all material times, this defendant's products
5 equaled or exceeded the standards of the industry as it relates to its products and they
6 complied with all applicable state and federal standards;

7
8 33. To the extent the Complaint asserts this defendant's alleged "market share"
9 liability, or "enterprise liability," the Complaint fails to state facts sufficient to constitute
10 a cause of action against the defendants; and

11 34. This defendant incorporates by reference any additional defenses interposed
12 by any other defendants herein to the extent such defenses are applicable to it.

13
14 35. This answering defendant specifically reserves the right to amend its
15 answers and claims herein by way of adding additional parties, affirmative defenses,
16 counterclaims, cross-claims, and third party claims, as additional investigation, discovery
17 or circumstances may warrant. Further, this answering defendant by this and subsequent
18 pleadings and actions herein does not waive any of its rights and positions that any
19 automatic stay, equitable stay, removal, or dismissal is, or should be, in effect as to this
20 litigation and the parties to it, by reason of bankruptcy filings by any other defendants,
21 and otherwise.

22 36. The state of Washington lacks personal jurisdiction over Viking.

23 Viking specifically reserve the right to plead such other affirmative defenses or
24 make additional claims, cross claims or counter claims or third party claims as discovery
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1 may warrant.

2 WHEREFORE, having fully answered the allegations of plaintiff's Complaint and
3 having stated affirmative defenses, defendant Viking requests the Court to grant relief as
4 follows:
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- 6 1. For judgment dismissing Plaintiff's Complaint with prejudice;
- 7 2. For judgment awarding Viking its costs and fees as allowed by law; and,
- 8 3. For such further relief as the Court deems just and equitable.

9 DATED this 1st day of February, 2018
10

11 /s/ Todd M. Thacker

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20 VIKING PUMP, INC.
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CERTIFICATE OF SERVICE

The undersigned, counsel for Viking Pump, Inc., hereby certifies that a true and correct copy of the foregoing DEFENDANT VIKING PUMP, INC.'S ANSWER TO PLAINTIFFS' COMPLAINT FOR PERSONAL INJURY was filed with the Court and served electronically through the CM-ECF (Electronic Case Filing) system to all counsel of record and to those registered to receive a Notice of Electronic Filing for this case on February 14, 2018.

/s/ Todd M. Thacker
Todd M. Thacker_____